No. 91-380

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FILED

In The Supreme Court of the United States

OCTOBER TERM, 1991

J. GERARD HOGAN, et al.,

Petitioners,

v.

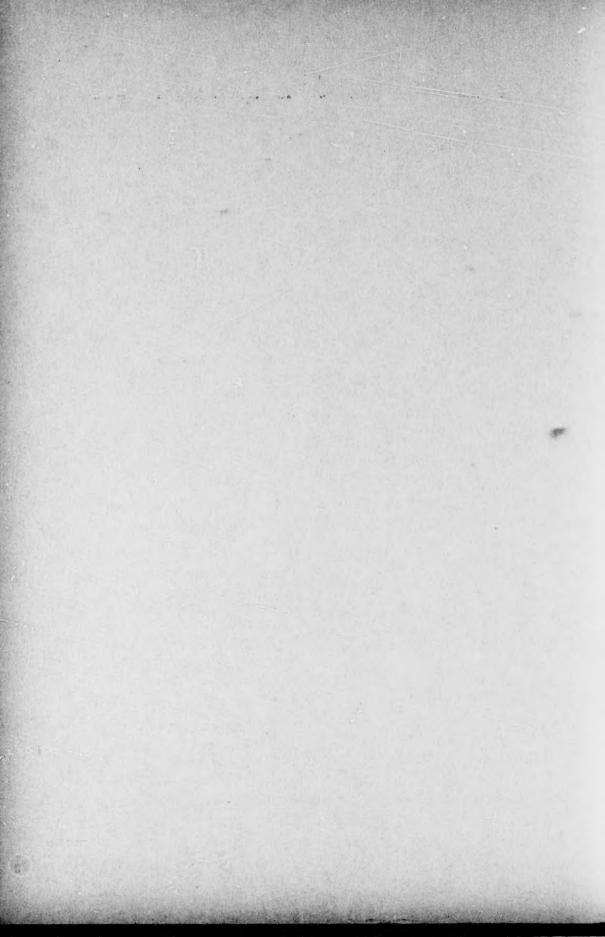
MARK E. MUSOLF, et al., Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioners respectfully invite the Court's attention to the following new matters which have arisen since the filing of the petition in this case. A petition for writ of certiorari was docketed in this Court on September 17, 1991 in the *Davis*-related case of *Nutbrown v. Munn*, 311 Or. 328, 811 P.2d 131 (1991), petition for cert. filed, No. 91-457. The questions presented by the *Nutbrown* petition are substantially similar to questions presented by this case.¹

On September 9, 1991, the Supreme Court of Tennessee announced its decision in the case of *L.L. Bean, Inc. v. Bracey*, 1991 WL 172407 (Tenn. 1991). Similar to the

¹ The decision of the Oregon Supreme Court in Nutbrown, supra, is discussed in the Petition in this case at 8, 10.

result reached by the Wisconsin Supreme Court in this case, the *Bean* decision is bottomed on the conclusion that states are free in the first instance to condition or deny a § 1983 cause of action.²

These recent developments demonstrate the widening conflict among the states with respect to the obligation of state courts to hear and entertain a federal cause of action created by Congress. Moreover, they further demonstrate a continuing conflict with numerous decisions of this Court. For example in Bean, the Tennessee Supreme Court relied heavily upon the pre-Felder and pre-Higgins state court decision of Linderkamp v. Bismark School District No. 1, 397 N.W.2d 76 (N.D. 1986), instead of applying the decisions of this Court. See, e.g., Felder v. Casey, 487 U.S. 131 (1988); Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 n.10 (1989); Howlett v. Rose, — U.S. —, 110 S. Ct. 2430 (1990); Dennis v. Higgins, — U.S. —, 111 S. Ct. 865 (1991).

CONCLUSION

For the reasons set forth above and in the petition for certiorari, Petitioners request that their petition for certiorari be granted.

Respectfully submitted,

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² See Petition at 10-14.

